IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.32993 of 2007
RAGHU YADAV & ORS
Versus
STATE OF BIHAR AND ANOTHER

For the Petitioners	**: M/s. Pramod Mishra, Vivek Kumar and Vijay Kumar 'Mukul', Advocates.**
For the State	**: Mr. Jharkhandi Upadhayay, A.P.P.**
For O.P. No.2	**: None.**

O R D E R

All the 22 accused of Misc. Case No.681C of 2000 have prayed for the quashing of order dated 20.3.2001 passed therein by the learned Sub Divisional Judicial Magistrate, Birpur, whereunder he has taken cognizance of offences under Sections 147/148/436/380/504 I.P.C. and under Sections 3/4 of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act as also for setting aside the order dated 31.5.2007 passed by the learned Presiding Judge, Fast Track Court No.VI, Saharsa, in Criminal Revision No.31 of 2001(S) whereby while dismissing the revision he has affirmed the order of the learned Magistrate.

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Briefly stated, the prosecution case is that one Banay Sada gave his fardbeyan at about 10 P.M. on the night of 28.1.1999 inter alia alleging that earlier that day at around 4 P.M. all the 22 F.I.R. named accused along with 20-22 unknown persons variously armed with lathi, bhala, musket and bombs came to his Mushahari Tola and having hurled abuses and resorted to blank firing they set fire to the Phoos hut of the informant wherein he used to reside with his family members and took away two she goats worth Rs.1000/-. It has further

been alleged that when the female folks of the neighbourhood arrived and laid protest the intruders fled away. The people of the neighbourhood made efforts and successfully doused the fire. The reasons for the occurrence is said to be a quarrel which had ensued three days earlier between Vinod Yadav and Mandal Yadav over not buying clothes from the shop of the informant as also previous enmity.

On the basis of the said fardbeyan Raghopur P.S. Case No.9 of 1999 under Sections 147/148/436/380/504 I.P.C. and 27 Arms Act was registered and the police after due investigation submitted a final form against all the accused persons on 29.7.2000 which was accepted by the learned Sub Divisional Judicial Magistrate, Birpur, on 7.12.2000. It appears that thereafter on 11.12.2000 a petition was filed by the informant in the court of the learned Sub Divisional Judicial Magistrate, Birpur, with a prayer for proceeding against the petitioners of the instant case on the basis of threats advanced by them and to treat the protest petition filed before submission of final form as complaint petition and accordingly the same having been numbered as 681 C of 2000 was taken up as a complaint case and after holding an inquiry under Section 202 Cr.P.C. cognizance, as stated above, was taken. Aggrieved thereby the petitioners accused preferred Criminal Revision No.31 of 2001(S) which too was dismissed.

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Assailing the two orders it was sought to be submitted on behalf of the petitioners that the order taking cognizance was a cryptic and non speaking order which did not disclose as to what materials were available before the learned Magistrate which led him to take

cognizance more so when the police after proper investigation had submitted a final form. It was also sought to be submitted that in course of the inquiry under Section 202 Cr.P.C. the witnesses, Kinu Lal Yadav, Satyendra Yadav, Vishwanath Sada and Ravindra Yadav, were examined on behalf of the complainant although they did not figure as witnesses in the F.I.R. It was further submitted that at the inquiry the witnesses had not named all the accused persons and only some of them had been named which goes to show that the accusations against all the petitioners was not well founded and the order taking cognizance was bad in law as well as on fact. It was contended that Raghopur P.S. Case No.9 of 1999 and Complaint Case No.681(C) of 2000 were by way of counter blast of Raghopur P.S. Case No.8 of 1999 filed by petitioner no.1 herein, Raghu Yadav, against the complainant and others and it was only with the intention to save himself and others that the instant case had been filed.

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I have had the occasion to peruse the two impugned orders of the learned Magistrate as also the Revisional Court and I find no apparent illegality with any of them. The Revisional Court for very cogent reasons has dismissed the revision and upheld the order of the learned Magistrate.

It is by now well settled by a four Judges' Bench of the Apex Court in the case of Chandra Deo Vs. Parkash Chandra (AIR 1963 SC 1430) that since the object of an inquiry under Section 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate has to satisfy himself that there is

sufficient ground for proceeding. It was also held that in order to come to this conclusion he is entitled to consider the evidence taken by him or recorded in an inquiry under Section 202 Cr.P.C. and he is not entitled to rely upon any other material besides this and where there is prima facie evidence, even though an accused may have a plausable defence of his innocence , the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused. Their Lordships in doing so approved the decisions of Patna High Court in the case of Parmanand Brahamchari Vs. Emperor(AIR 1930 Pat 30), Radha Kishun Sao Vs. S.K. Mishra(AIR 1949 Pat 36) and Ramkisto Sahu Vs. State of Bihar(AIR 1952 Pat 125) wherein it was held that the object of the inquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the inquiry has to do this only with reference to the intrinsic quality of the statements made before him at the inquiry, which would naturally mean the complaint itself, the statement on oath made by the complainant and the statement made before him by persons examined at the instance of the complainant.

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In view of the categoric observations of the Hon'ble Apex Court I am unable to accept the submissions advanced by the learned counsel for the petitioners. It is true that the police had submitted a final form after due investigation but the learned Magistrate has based his finding on consideration of the materials and evidence available on record of the complaint case without rightly looking into the case diary or the final form submitted by the police and the Revisional

Court for the cogent reasons assigned in the speaking order has rightly dismissed the revision.

In view of the discussions made above, I find no merit in this application which is accordingly dismissed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 6th of August, 2008.
Pradeep Srivastava/A.F.R.

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